

# **EXHIBIT A**

1. Plaintiff\* (name or names):  
Zynga Game Network, Inc.  
alleges causes of action against defendant\* (name or names):  
CLZ Concepts, Jeff Chen and James Zhang

2. This pleading, including attachments and exhibits, consists of the following number of pages: 5

3. a. Each plaintiff named above is a competent adult  
☒ except plaintiff (name): Zynga Game Network, Inc.  
(1) ☒ a corporation qualified to do business in California  
(2) ☐ an unincorporated entity (describe):  
(3) ☐ other (specify):

b. ☐ Plaintiff (name):  
a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):  
b. ☐ has complied with all licensing requirements as a licensed (specify):  
c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person  
☒ except defendant (name): CLZ Concepts  
(1) ☐ a business organization, form unknown  
(2) ☐ a corporation  
(3) ☐ an unincorporated entity (describe):  
(4) ☐ a public entity (describe):  
(5) ☒ other (specify): Partnership

☐ except defendant (name):  
(1) ☐ a business organization, form unknown  
(2) ☐ a corporation  
(3) ☐ an unincorporated entity (describe):  
(4) ☐ a public entity (describe):  
(5) ☐ other (specify):

Page 1 of 3

PLD-C-001

SHORT TITLE: <b>Zynga Game Network, Inc. v. CLZ Concepts, et al.</b>	CASE NUMBER:
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## 4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

- (1) ☐ Doe defendants (specify Doe numbers): \_\_\_\_\_ were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☐ Doe defendants (specify Doe numbers): \_\_\_\_\_ are persons whose capacities are unknown to plaintiff.

- c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

5. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

## 7. This court is the proper court because

- a. ☒ a defendant entered into the contract here.
- b. ☐ a defendant lived here when the contract was entered into.
- c. ☐ a defendant lives here now.
- d. ☒ the contract was to be performed here.
- e. ☒ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☐ real property that is the subject of this action is located here.
- g. ☐ other (specify):

## 8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- ☒ Breach of Contract
- ☐ Common Counts
- ☒ Other (specify):

Unfair Competition in violation of Cal. Bus. and Prof. Code Section 17200 (See attachment at pg. 5)

9. ☐ Other allegations:

## 10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. ☐ damages of: \$
- b. ☐ Interest on the damages
- (1) ☐ according to proof
- (2) ☐ at the rate of (specify): \_\_\_\_\_ percent per year from (date):
- c. ☒ attorney's fees
- (1) ☐ of: \$
- (2) ☒ according to proof.
- d. ☒ other (specify):

Preliminary and permanent injunctive relief enjoining breach of contracts and unfair competition.

11. ☒ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Paragraph 4

Date: January 30, 2009

Jedediah Wakefield

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

PLD-C-001(1)

SHORT TITLE:

Zynga Game Network, Inc. v. CLZ Concepts, et al.

CASE NUMBER:

First

(number)

## CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Zynga Game Network, Inc. (corporate successor to Presidio Media, Inc.)

alleges that on or about (date): February 4, 2008

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement):

Presidio Media, Inc., CLZ Concepts, Jeff Chen, Linus Liang and James Zhang

☐ A copy of the agreement is attached as Exhibit A, or☒ The essential terms of the agreement ☒ are stated in Attachment BC-1 ☐ are as follows (specify):

BC-2. On or about (dates): November 2008-January 2009

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts (specify):

On or about November 2008, Defendants CLZ Concepts, Jeff Chen and James Zhang began doing business as Aftershock Innovations LLC. Defendants are currently and have been developing, marketing and distributing software on social-networking platforms and/or software that has functions and/or features similar to software applications Plaintiff purchased from Defendants.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

☐ as stated in Attachment BC-4 ☒ as follows (specify):

Loss of marketshare and opportunities which cannot be adequately remedied at law, and continuing costs and legal fees in an amount subject to proof.

BC-5. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☒ according to proof.BC-6. ☒ Other:

Plaintiff is entitled to preliminary and permanent injunctive relief pursuant to Sections 4.2.1 and 8.11 of the parties' February 4, 2008 Asset Purchase Agreement, Sections 7(a), 7(d), 7(e) and 11 of the February 4, 2008 employment agreements between Plaintiff and Jeff Chen and James Zhang, respectively, California Code of Civil Procedure Section 526(a) and California Business and Professions Code Section 16601.

Page 3

Page 1 of 1

**Zynga Game Network, Inc. v. CLZ Concepts, et al.—Page 4 of 5**

**Attachment BC-1 to First Cause of Action for Breach of Contract:**

In connection with an agreement that Presidio Media, Inc. (now Zynga Game Network, Inc.) would purchase the assets and goodwill of the business comprising the development and distribution of software applications social-networking platforms operated by CLZ Concepts, Jeff Chen, James Zhang and Linus Liang, the Defendants agreed in Section 4.2.1 of the parties' February 4, 2008 Asset Purchase Agreement not to engage in a "Competing Business" for two years following the Agreement's closing date. Pursuant to Section 4.2.1 of the Asset Purchase Agreement, a "Competing Business" means:

(i) for purposes of the first year immediately following the Closing Date, any business consisting of any of the following: (A) the development, marketing or distribution of applications for the Facebook platform or other social-networking platforms or (B) the development, marketing or distribution of software applications that have functions and/or features similar to those of the Purchased Applications; and (ii) for purposes of the second year immediately following the Closing Date, the development, marketing or distribution of applications for the Facebook platform or other social-networking platforms that have functions and/or features substantially similar to those developed, marketed or distributed by the Purchaser or otherwise available on the Purchaser's network.

In conjunction with the Asset Purchase Agreement, Defendants Jeff Chen and James Zhang each signed employment agreements with Presidio Media, Inc. (now Zynga Game Network, Inc.) each dated February 4, 2008. In Section 7(a)(i) of the employment agreement with Jeff Chen and Section 7(a)(i) of the employment agreement with James Zhang, respectively, Mr. Chen and Mr. Zhang each agreed that for two years following their Agreement's closing date they would not directly or indirectly:

participate or engage in the design, development, manufacture, production, marketing, sale or servicing of any product of, or otherwise engage in the provision of any services to, any person or entity that engages in a business that is Directly Competitive (as defined below) in any Restricted Territory (as defined below) . . . .

Section 7(b)(ii) of the employment agreement with Jeff Chen and Section 7(b)(ii) of the employment agreement with James Zhang, respectively, defines "Directly Competitive" to mean:

(A) for purposes of the first year of the Restrictive Period, (1) developing, marketing or distributing software applications that have functions and/or features similar to those of the Purchased Applications or (2) developing, marketing or distributing applications for the Facebook platform or other social-networking platforms; and (B) for purposes of the second year of the Restrictive Period, developing, marketing or distributing applications for the Facebook platform or other social-networking platforms that have functions and/or features substantially similar to those developed, marketed or distributed by the Company or otherwise available on the Company's network.

Zynga Game Network, Inc. v. CLZ Concepts, et al.—Page 5 of 5

**SECOND CAUSE OF ACTION FOR UNFAIR COMPETITION AGAINST  
DEFENDANTS CLZ CONCEPTS, JEFF CHIEN AND JAMES ZHANG**

**UC-1.** Plaintiff incorporates by reference paragraphs 1 – 11 and BC-1 through BC-6 inclusive, as though fully set forth herein.

**UC-2** By the acts alleged herein, Defendants have engaged in unfair competition including unlawful business practices, in violation of Plaintiff's rights and in violation of Cal. Bus. & Prof. Code Sections 17200, *et seq.* and the common law. Specifically, all Defendants have engaged in unlawful behavior constituting unfair competition by breaching CLZ Concepts', Jeff Chen's and James Zhang's contractual and legal obligations not to compete against Plaintiff pursuant to Section 4.2.1 of the parties' February 4, 2008 Asset Purchase Agreement, Sections 7(a)(i)-(ii) of the February 4, 2008 employment agreements between Plaintiff and Jeff Chen and James Zhang, respectively, and California Business and Professions Code Section 16601.

**UC-3.** As a direct and foreseeable result of Defendants' violation of Business and Professions Code Section 17200, Plaintiff has suffered and will continue to suffer irreparable harm, including but not limited to further breach of Defendants' contractual and legal obligations not to compete against Plaintiff pursuant to Section 4.2.1 of the parties' February 4, 2008 Asset Purchase Agreement, Sections 7(a)(i)-(ii) of the February 4, 2008 employment agreements between Plaintiff and Jeff Chen and James Zhang, respectively, and California Business and Professions Code Section 16601. Plaintiff is informed and believes, and based thereon alleges, that unless they are enjoined, CLZ Concepts, Jeff Chen and James Zhang will continue to inflict great and irreparable harm against Plaintiff.

# **EXHIBIT B**

SUM-100

# **SUMMONS** (CITACION JUDICIAL)

## **NOTICE TO DEFENDANT:** (AVISO AL DEMANDADO):

CLZ CONCEPTS, a California partnership, d/b/a Aftershock Innovations LLC,  
JEFF CHEN and JAMES ZHANG

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
ZYNGA GAME NETWORK, INC., a Delaware corporation

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que la quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California  
County of San Francisco  
400 McAllister Street, Room 205  
San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso):

09..48455X

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Jedediah Wakefield  
(415) 875-2300

FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104

DATE: January 30, 2009  
(Fecha)

Clerk, by  
(Secretario)

*Cristina E. Bautista*, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
- ☐ by personal delivery on (date):



Page 1 of 1



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): <b>Jedediah Wakefield (CSB No. 17803)</b> <b>FENWICK &amp; WEST LLP</b> 555 California Street, 12th Floor San Francisco, CA 94102 TELEPHONE NO.: (415) 875-2300 FAX NO.: (415) 281-1350		<b>FOR COURT USE ONLY</b>  <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Superior Court of California County of San Francisco  <div style="display: flex; justify-content: space-around;"> <span>JAN 30 2009</span> <span>JAN 30 2009</span> </div> <b>GORDON PARK II, Clerk</b> BY: <i>[Signature]</i> Deputy Clerk	
ATTORNEY FOR (Name): <b>Plaintiff, Zynga Game Network, Inc.</b> SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street, Room 205 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NUMBER: <div style="font-size: 1.2em; font-weight: bold;">CSC-09-484557</div> JUDGE: DEPT:	
CASE NAME: <b>Zynga Game Network, Inc. v. CLZ Concepts, et al.</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |   |   |   |
|---|---|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other P/DPDWD (23)<br><b>Non-P/DPDWD (Other) Tort</b><br><input checked="" type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-P/DPDWD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input checked="" type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400-3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|---|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 2
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: January 30, 2009  
 Jedediah Wakefield  
 (TYPE OR PRINT NAME)
- [Signature]*  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

# **EXHIBIT C**

CASE NUMBER: CGC-09-484557 ZYNGA GAME NETWORK INC VS. CLZ CONCEPTS DBA AF

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE:** JUL-02-2009

**TIME:** 9:00AM

**PLACE:** Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

# **EXHIBIT D**

1 JEDEDIAH WAKEFIELD (CSB No. 178058)  
 2 jwakefield@fenwick.com

3 JENNIFER L. KELLY (CSB No. 193416)  
 4 jkelly@fenwick.com

5 FENWICK & WEST LLP  
 555 California Street, 12th Floor  
 San Francisco, CA 94104  
 Telephone: (415) 875-2300  
 Facsimile: (415) 281-1350

6 HENRY Z. CARBAJAL III (CSB No. 237951)  
 7 hcarbajal@fenwick.com

8 FENWICK & WEST LLP  
 Silicon Valley Center  
 801 California Street  
 Mountain View, CA 94041  
 Telephone: (650) 988-8500  
 Facsimile: (650) 938-5200

9 Attorneys for Plaintiff  
 10 ZYNGA GAME NETWORK, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13  
 14  
 15 ZYNGA GAME NETWORK, INC., a  
 Delaware corporation,

16 Plaintiff,

17 v.

18 CLZ CONCEPTS D/B/A AFTERSHOCK  
 19 INNOVATIONS LLC, JEFF CHEN AND  
 JAMES ZHANG

20 Defendants.  
 21

Case No. CGC-09-484557

22 APPLICATION FOR TEMPORARY RESTRAINING  
 ORDER TO SHOW CAUSE RE PRELIMINARY  
 INJUNCTION

Date: February 3, 2009

Time: 11:00 a.m.

Dept.: 301

Judge: Hon. Peter Busch

Date of Filing: February 3, 2009

Trial Date: No date set

23 Pursuant to California Code of Civil Procedure Sections 526 and 527, and Business and  
 24 Professions Code Sections 16601 and 17203, Zynga Game Network, Inc. ("Zynga") hereby  
 25 applies for a temporary restraining order and order to show cause why a preliminary injunction  
 26 should not issue to:

27 ///

28 ///

1           1.       Enjoin and restrain Defendants CLZ Concepts, Aftershock Innovations LLC, Jeff  
2       Chen, James Zhang, and all officers, directors, employees, agents, or persons in active concert or  
3       participation with any of them ("the Enjoined") from developing, marketing and distributing the  
4       Mafia Live! game for use on the Apple iPhone, and further breaches of (1) the parties'  
5       February 4, 2008 Asset Purchase Agreement, (2) Jeff Chen's February 6, 2008 Employment  
6       Agreement with Zynga and (3) James Zhang's February 6, 2008 Employment Agreement with  
7       Zynga.

8           2.       Require Defendants to take all necessary steps to preserve documents, data, tangible  
9       things, and other discoverable materials that are known or reasonably likely to exist and are related  
10      to the issues presented by this action, including but not limited to any current and/or archived  
11      electronic logs, meta data, and directories (such as firewall logs, server logs, VPN and FTP logs,  
12      e-mail boxes, repositories or archives) that reflect any transmissions between or among Defendants  
13      and/or Zynga, or that reflect the development of the Mafia Live! game.

14          3.       Require the Enjoined to suspend any and all document retention or destruction  
15      policies or practices with regard to any discoverable information (electronic, documentary, or  
16      otherwise) in any media (paper, hard drives, caches, CD-ROMs, diskettes, or any other media).

17          4.       Require Defendants to appear on February 27, 2009 before the Court to show  
18      cause, if any, why the injunction and restraints sought in Zynga's Application should not be  
19      entered in the form of a preliminary injunction for the remainder of this action, together with any  
20      other appropriate injunctive relief. Zynga respectfully requests that Defendants' opposition be  
21      filed and served (either personally or electronically) by 5:00 p.m. on February 17, 2009, and  
22      Zynga's reply papers, if any, be filed and served (either personally or electronically) by 5:00 p.m.  
23      on February 23, 2009.

24               This Application is made on the following grounds:

25          1.       Zynga is being irreparably harmed by Defendants' breach of their covenants not to  
26      compete against Zynga pursuant to Section 4.2.1 of the Asset Purchase Agreement and Sections  
27      7(a)(i)-(ii) of Jeff Chen's and James Zhang's Employment Agreements with Zynga. Unless this  
28      unlawful conduct is immediately stopped, Zynga will continue to suffer great irreparable harm.

1 Although Zynga is likely to succeed on the merits of its breach of contract and unfair competition  
 2 claims, legal remedies are inadequate to compensate the injury Defendants have caused Zynga by  
 3 their unlawful actions.

4 2. Zynga has not made any previous application for similar relief.

5 This motion is based on this Application; Zynga's Complaint for Breach of Contract and  
 6 Unfair Competition; the Memorandum in Support of Plaintiff Zynga's Application for Temporary  
 7 Restraining Order to Show Cause; the supporting declarations of Jedediah Wakefield, Andrew  
 8 Trader, Scott Dale and Kyle McEachern; the [Proposed] Temporary Restraining Order and Order  
 9 to Show Cause; and such evidence as shall be presented at any hearing this Court shall allow.

10 Dated: February 3, 2009

FENWICK & WEST LLP

11 By

  
 12 Jedediah Wakefield

13 Attorneys for Plaintiff  
 14 ZYNGA GAME NETWORK, INC.

FENWICK & WEST LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO

25  
26  
27  
28

# **EXHIBIT E**



1 JEDEDIAH WAKEFIELD (CSB No. 178058)  
jwakefield@fenwick.com

2 JENNIFER L. KELLY (CSB NO. 193416)  
jkelly@fenwick.com

3 FENWICK & WEST LLP  
 555 California Street, 12th Floor  
 4 San Francisco, CA 94104  
 Telephone: (415) 875-2300  
 5 Facsimile: (415) 281-1350

6 HENRY Z. CARBAJAL III (CSB No. 237951)  
hcarbajal@fenwick.com

7 FENWICK & WEST LLP  
 Silicon Valley Center  
 8 801 California Street  
 Mountain View, CA 94041  
 9 Telephone: (650) 988-8500  
 Facsimile: (650) 938-5200

10 Attorneys for Plaintiff  
 11 ZYNGA GAME NETWORK, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 COUNTY OF SAN FRANCISCO  
 14

15  
 16 ZYNGA GAME NETWORK, INC., a  
 Delaware corporation,

17 Plaintiff,

18 v.

19 CLZ CONCEPTS D/B/A AFTERSHOCK  
 20 INNOVATIONS LLC, JEFF CHEN AND  
 JAMES ZHANG,

21 Defendants.  
 22  
 23  
 24  
 25  
 26  
 27  
 28

Case No. CGC-09-484557

MEMORANDUM OF POINTS AND AUTHORITIES  
 IN SUPPORT OF *EX PARTE* APPLICATION FOR  
 TEMPORARY RESTRAINING ORDER TO SHOW  
 CAUSE RE PRELIMINARY INJUNCTION

Date: February 3, 2009  
 Time: 11:00 a.m.  
 Dept.: 301  
 Judge: Hon. Peter Busch

Date of Filing: February 3, 2009  
 Trial Date: No date set

TABLE OF CONTENTS

	<u>Page(s)</u>
I. ZYNGA AND ITS BUSINESS .....	2
II. ZYNGA'S ACQUISITION OF DEFENDANTS' SOCIAL NETWORKING GAME BUSINESS AND DEFENDANT'S RELATED NON-COMPETE OBLIGATIONS.....	2
III. CHEN'S AND ZHANG'S EMPLOYMENT BY ZYNGA.....	4
IV. DEFENDANTS' RELEASE OF A SOCIAL NETWORKING GAME FOR THE IPHONE IN VIOLATION OF THEIR NON-COMPETE OBLIGATIONS .....	6
V. ZYNGA IS LIKELY TO SUCCEED ON THE MERITS OF ITS CONTRACT CLAIM.....	9
A. The Covenants Not To Compete Are Valid And Enforceable.....	10
B. Defendants Have Breached The Non-Compete Covenants .....	11
VI. ZYNGA IS LIKELY TO SUCCEED ON THE MERITS OF ITS UNFAIR COMPETITION CLAIM.....	13
VII. ZYNGA WILL BE IRREPARABLY HARMED UNLESS DEFENDANTS ARE ENJOINED FROM VIOLATING THEIR NONCOMPETE OBLIGATIONS .....	14
VIII. THE BALANCE OF EQUITIES STRONGLY FAVORS ZYNGA.....	15
IX. A BOND IS NOT NECESSARY HERE.....	16
X. CONCLUSION .....	17

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**TABLE OF CONTENTS****Page(s)****CASES**

<i>Alliant Ins. Services, Inc. v. Gaddy,</i> 159 Cal. App. 4 <sup>th</sup> 1292 (2008).....	9, 10
<i>American Credit Indemnity Co. v. Sacks,</i> 213 Cal. App. 3d 622 (1989).....	15
<i>Basicomputer Corp. v. Scott,</i> 973 F.2d 507 (6 <sup>th</sup> Cir. 1992).....	14
<i>Cal Francisco Inv Corp. v. Vrionis,</i> 14 Cal. App. 3d 318 (1971).....	9
<i>Courtesy Temporary Serv., Inc. v. Camacho,</i> 222 Cal. App. 3d 1278 (1990).....	14
<i>Fleming v. Ray-Suzuki, Inc.,</i> 225 Cal. App. 3d 574 (1990).....	10
<i>FPI Development, Inc. v. Nakashima,</i> 231 Cal. App. 3d 367 (1991).....	9
<i>Monogram Industries, Inc. v. Sar Industries, Inc.,</i> 64 Cal. App. 3d 692, 698 (1996).....	9, 10, 11
<i>People ex rel Gallo v. Acuna,</i> 14 Cal. 4th 1090 (1997) .....	9
<i>Prison Health Services, Inc. v. Emre Umar and Correctional Medical Care, Inc.,</i> 2002 U.S. Dist. LEXIS 12267 (E.D. Penn. May 8, 2002) .....	15
<i>Readylink Healthcare v. Cotton,</i> 126 Cal. App. 4th 1006 (2005).....	14
<i>Sizewise Rentals, Inc. v. Mediq/PRN Life Support Services, Inc.,</i> 87 F. Supp. 2d 1194 (D. Kan. 2000) .....	15, 16

**STATUTES**

Cal. Bus. & Prof. Code § 16601 .....	10
Cal. Bus. & Prof. Code § 17200 .....	14
Cal. Bus. & Prof. Code § 17203 .....	14
Cal. Civ. Proc. Code § 526.....	15
Cal. Code of Civ. Proc. § 527(c).....	9
Cal. Code of Civil Proc. §529.1 .....	16
California Business & Professions Code Section. 17200 .....	13

**TABLE OF CONTENTS**  
(continued)

**Page(s)**

**OTHER AUTHORITIES**

Weil & Brown, <i>California Practice Guide: Civil Procedure Before Trial</i> § 9:603, at 9(II)-26-27 (2008) .....	16
4 Witkin, <i>California Procedure, Pleading</i> § 476 (4th ed. 1997).....	9

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## INTRODUCTION

Zynga Game Network, Inc. ("Zynga") makes this emergency application based on defendants' brazen breach of an enforceable non-compete provision that prohibits them, for two years, from developing, distributing, or marketing social networking games that contain features or functions similar to the ones they recently sold to Zynga for over a million dollars. Despite having expressly promised Zynga they would not compete in this space during this period—a substantial inducement to Zynga's agreement to pay them such a hefty sum for these games and their associated goodwill—Defendants CLZ Concepts d/b/a Aftershock Innovations LLC, Jeff Chen and James Zhang (collectively, "Defendants") released a social networking game for the iPhone just two weeks ago. That game, called Mafia Live!, not only contains features and functions that are substantially similar to the ones Defendants represented were critical to the success of the games they sold to Zynga, but will directly compete with Zynga's leading game, Mafia Wars, a version of which Zynga has been developing for use on the iPhone and which it is planning to release within a matter of weeks. Defendants were aware of these plans, by virtue of Chen and Zhang having been employed by Zynga as highly paid product managers for seven months following Zynga's purchase of their social networking games. Indeed, Chen and Zhang quit Zynga just four months ago, strongly suggesting they not only knew of Zynga's plan to develop a version of Mafia Wars for the iPhone (a plan formulated while Chen and Zhang were working at Zynga), but may have started developing Mafia Live! *while still employed by Zynga*, in which case the game and all associated intellectual property rights would rightfully belong to Zynga pursuant to the confidentiality and invention assignment agreements both Chen and Zhang executed as a condition of their employment by Zynga.

Without immediate action from this Court, Zynga will be permanently and irreparably harmed. The characteristic features and functions of the social networking games Zynga purchased from Defendants are critical to the success of these and other games distributed by Zynga. Defendants' marketing and distribution of Mafia Live!, a social networking game that contains highly similar features and functions, is depriving Zynga of the value of the assets for which it paid Defendants over a million dollars, allowing Defendants to gain an unfair advantage

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1 and head start in the highly competitive and rapidly evolving market for social networking games,  
 2 and threatening to displace market share for Zynga's upcoming release of Mafia Wars  
 3 permanently. Accordingly, Zynga requests that the Court enter a temporary restraining order to  
 4 prevent Defendants from further marketing or distribution of Mafia Live! until the hearing can be  
 5 held on Zynga's motion for a preliminary injunction.

## 6 STATEMENT OF FACTS

### 7 I. ZYNGA AND ITS BUSINESS

8 Zynga is a social gaming company based in San Francisco, California, and the corporate  
 9 successor to Presidio Media, Inc. Zynga offers a range of games such as Texas Hold 'Em poker,  
 10 strategy games like Sudoku and thematic text-based role playing games like "Mafia Wars," where  
 11 players start a mafia family and run a crime business. Every game offered by Zynga allows a  
 12 player to play the game with other members of social networks. Declaration of Andrew Trader  
 13 ("Trader Decl.") ¶¶ 2-3.

14 Zynga was founded in 2007 (as Presidio Media, Inc.) and launched games for social  
 15 networks in June 2007. Trader Decl. ¶ 3. Across various popular social networks, like MySpace  
 16 and Facebook, millions of customers participate in the online games offered by Zynga. As of  
 17 January 2009, Zynga has over 75 million registered game users. *Id.*

### 18 II. ZYNGA'S ACQUISITION OF DEFENDANTS' SOCIAL NETWORKING GAME 19 BUSINESS AND DEFENDANT'S RELATED NON-COMPETE OBLIGATIONS

20 In January 2008, Zynga (as Presidio Media, Inc.) began negotiations with another  
 21 San Francisco-based company called CLZ Concepts ("CLZ") and its partners Jeff Chen, James  
 22 Zhang and Linus Liang, for purchase of the assets and goodwill of CLZ, including several social-  
 23 networking applications developed by CLZ for use on social networks like Facebook and Bebo.  
 24 Trader Decl. ¶ 4.

25 At the time of the negotiations in late January 2008, CLZ Concepts was making and  
 26 distributing games for social networking platforms. Trader Decl. ¶ 5. Zynga sought to purchase  
 27 CLZ in order to further solidify its position in the market for social networking games. *Id.* CLZ  
 28 had developed social networking applications that had gained substantial popularity on social

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1 networking websites. *Id.* These applications possessed distinctive features and functionality that,  
 2 from Zynga's perspective, made CLZ an attractive target for acquisition. *Id.*

3 CLZ described the essential features of its social networking applications in a PowerPoint  
 4 presentation it provided to Zynga during the parties' negotiations. Trader Decl. ¶ 5 & Ex. A. In  
 5 it, CLZ touted certain key features of its applications, including a "ranking" function, a "send"  
 6 function and a "meet" function. *Id.*; Declaration of Kyle McEachern ("McEachern Decl."), ¶ 6 &  
 7 Ex. A.

8 On February 4, 2008, Zynga (as Presidio Media, Inc.), CLZ Concepts, and Chen, Zhang  
 9 and Liang, as individual sellers, signed the Asset Purchase Agreement (the "APA") for the  
 10 purchase of CLZ's assets and goodwill for over \$1 million and issuance of stock to Chen, Zhang  
 11 and Liang. Trader Decl. ¶ 7 & Ex. B.<sup>1</sup> The APA specifies the software applications acquired  
 12 from CLZ as "Purchased Applications." *Id.* at Ex. B (Schedule 1.1.1.1). The list of Purchased  
 13 Applications included all but two of CLZ's software applications, one of which raised intellectual  
 14 property concerns and both of which were phased out of production. *Id.* at ¶ 8. The APA further  
 15 provided for Zynga's purchase of, among other things, all intellectual property rights to the sold  
 16 assets, all software and source code to the sold assets, all goodwill associated with the sold assets  
 17 and all trade secrets used in connection with the sold assets. *Id.* at Ex. A, at 1-2.

18 To insure that Zynga would realize the full benefit of its purchase, Zynga bargained for a  
 19 provision limiting CLZ and the individual sellers from engaging in a "Competing Business" with  
 20 Zynga for two years following the Agreement's closing date of February 4, 2009. Section 4.2.1  
 21 of the APA defines a "Competing Business" to mean:

22 (i) for purposes of the first year immediately following the Closing  
 23 Date, any business consisting of any of the following: (A) the  
 24 development, marketing or distribution of applications for the  
 25 Facebook platform or other social-networking platforms or (B) the  
 26 development, marketing or distribution of software applications that  
have functions and/or features similar to those of the Purchased  
Applications; and (ii) for purposes of the second year immediately  
 following the Closing Date, the development, marketing or  
 distribution of applications for the Facebook platform or other

27 <sup>1</sup> Zynga intended to purchase all assets of CLZ and incur most known liabilities. Zynga, however, was unwilling to  
 28 absorb unknown CLZ liabilities, which led to the structure of the transaction as an Asset Purchase Agreement.  
 Trader Decl. ¶ 8.

social-networking platforms that have functions and/or features substantially similar to those developed, marketed or distributed by the Purchaser or otherwise available on the Purchaser's network.

Trader Decl., Ex. B at 18-19 (emphasis added).<sup>2</sup>

Zynga insisted on such a provision to eliminate any concern that CLZ and the individual sellers would immediately reorganize and compete against Zynga in the very business they sold to Zynga, namely, developing games for social networking platforms. Trader Decl. ¶10.

Moreover, the characteristics of the software applications CLZ sold to Zynga were distinctly successful in the social networking marketplace prior to their purchase. *Id.* Zynga would not have been able to fully exploit the intrinsic value of these characteristics of CLZ applications if, after sale, CLZ or the individual sellers could immediately compete in the marketplace with similarly featured games. *Id.* Thus, Zynga sought to safeguard its investment in the applications formerly owned by CLZ through the non-competition provision curtailing CLZ's ability to immediately make and sell similarly featured games for a limited time. *Id.*

### III. CHEN'S AND ZHANG'S EMPLOYMENT BY ZYNGA

In connection with the APA, both Chen and Zhang were offered positions with Zynga as Product Managers. Trader Decl. ¶ 11 & Exs. C-D.<sup>3</sup> Each was provided with and signed a written employment agreement that contained a provision, Section 7(a)(i), indicating that for two years they would not directly or indirectly:

participate or engage in the design, development, manufacture, production, marketing, sale or servicing of any product of, or otherwise engage in the provision of any services to, any person or entity that engages in a business that is Directly Competitive (as defined below) in any Restricted Territory (as defined below) . . . .

Trader Decl. Ex. C at 11, Ex. D at 11.

Section 7(b)(ii) of the employment agreements define "Directly Competitive" to mean:

(A) for purposes of the first year of the Restrictive Period, (1) developing, marketing or distributing software applications that have functions and/or features similar to those of the Purchased

<sup>2</sup> Hereinafter, the term Year One refer to the first year following the Closing Date (which was February 4, 2008). Year Two refer to the second year following the Closing Date.

<sup>3</sup> CLZ's third founder and only other employee, Linus Liang (who is not a defendant) was also offered and accepted a position with Zynga. Trader Decl. ¶ 18.



Applications or (2) developing, marketing or distributing applications for the Facebook platform or other social-networking platforms; and (B) for purposes of the second year of the Restrictive Period, developing, marketing or distributing applications for the Facebook platform or other social-networking platforms that have functions and/or features substantially similar to those developed, marketed or distributed by the Company or otherwise available on the Company's network.

Trader Decl. Ex. C at 11; Ex. D at 11 (emphasis added).).

Finally, in connection with their employment by Zynga, Chen and Zhang each also executed Employee Invention Assignment and Confidentiality Agreements (exhibit A to their respective employment agreements) that obligated them to disclose all inventions made by them prior to their employment by Zynga, and acknowledging that all inventions made in the scope of their employment or that relate to Zynga's business would be owned by Zynga. Trader Decl. Ex. C at Ex A, ¶ 3; Ex. D at Ex A, ¶ 3.

Chen and Zhang began working for Zynga on February 6, 2008. A significant portion of their time was spent working on the applications CLZ sold to Zynga. They also spent a substantial amount of time planning new Zynga software applications. Trader Decl., ¶ 19.

The former CLZ employees called themselves "CLZ Studios" within Zynga and operated like a separate unit of the company. However, they were regular attendees at Zynga's daily and weekly strategy meetings where sensitive, non-public product and strategic information was shared. Trader Decl. ¶ 20. During the course of their employment by Zynga, Chen and Zhang received internal information about Zynga product trends, and important gaming features according to Zynga's internal research. Declaration of Scott Dale ("Dale Decl."), ¶ 4. Chen and Zhang were also present for strategy meetings where Zynga discussed internal product plans, including its plans to launch its Mafia Wars game on the iPhone. *Id.*; see also Trader Decl. ¶ 25.

On September 2, 2008, approximately seven months after they were hired, Chen and Zhang left Zynga.<sup>4</sup> Trader Decl. ¶ 21. Six days later, on September 8, 2008, Chen formed a company called CLZ Concepts, LLC and registered it with the California Secretary of State. *Id.*

<sup>4</sup> In conjunction with their departure, Chen and Zhang both signed separation agreements with Zynga reaffirming their non-competition obligations. Trader Decl. Ex. E at § 3(i); Ex. F at § 3(i).

1 at ¶ 22.

2 In November 2008, Zynga released "Live Poker," a mobile version of its popular Texas  
3 Hold 'Em game for the iPhone. Trader Decl. ¶ 25. In addition, consistent with the confidential  
4 and strategic plans it had revealed to Chen and Zhang, Zynga has been developing a version of  
5 Mafia Wars for the iPhone. That game is scheduled for release in the next few weeks. *Id.*

6 **IV. DEFENDANTS' RELEASE OF A SOCIAL NETWORKING GAME FOR THE**  
7 **IPHONE IN VIOLATION OF THEIR NON-COMPETE OBLIGATIONS**

8 On or about January 20, 2009, Zynga discovered that Chen and Zhang, through their new  
9 venture CLZ Concepts (doing business as Aftershock Innovations LLC), released a social  
10 networking game for the iPhone called Mafia Live! on or around January 19, 2009. Trader Decl.  
11 ¶¶ 23-24; McEachern Decl. ¶ 7.

12 Although the appearance and plot of Mafia Live! is different from the games Zynga  
13 purchased from Defendants, Mafia Live! contains features and functions that are similar—indeed,  
14 highly similar—to these games, in direct violation of Defendants' non-compete obligations.

15 As demonstrated in Paragraphs 11-19 of the accompanying McEachern Declaration, these  
16 similar features and functions include the following:

- 17 • **Leaderboard Feature:** Both You're a Hottie and Mafia Live! have a feature that shows  
18 leading participants in each game. In the You're a Hottie Purchased Application, there is  
19 a leaderboard of hotties that have accrued the most value, or "Top Hotties," and hottie  
20 owners with the most net worth in cash and hotties, called "Top Owners." Mafia Live!  
21 also has a leaderboard function that is unlocked after several levels of play called "My  
22 Snitch" which list the families with the most members, most fights won, most jobs done  
23 and those with the most experience.
- 24 • **Recruit Function:** Both You're a Hottie and Mafia Live! have a feature that allows  
25 recruiting of other players to the game. In the You're a Hottie application, the application  
26 lists contacts, or "friends," to whom the player can send invitations to request that they  
27 join and participate. In Mafia Live!, the "Recruit" function allows users to send  
28 invitations to join the game via email address manually entered or obtained from the  
Contacts list of a user's iPhone. Additionally, both games give incentives for the  
recruitment of additional participants. You're a Hottie provides a virtual cash bonus for  
every one of your friends participating in the game. Mafia Live! provides a "loyalty"  
points incentive that can be used to replenish health, energy or stamina statistics of the  
player.
- **Purchase of Property Feature:** Both You're a Hottie and Mafia Live! have a feature that  
allows the purchase of property. In the You're a Hottie application, the game allows for  
the purchase of real property in the form of mansions and residences to store a player's  
hotties. Storage of hotties in a purchased property allows the hottie to accrue additional

value. Mafia Live! likewise allows a player to purchase real property in the form of yards, lots and various businesses. A player accrues additional cash at certain intervals as the holder of real property.

- **Upkeep Payment Feature:** Both games have an “upkeep” payment feature, which requires users to pay an upkeep fee while they own certain property. In the You’re a Hottie application, the game requires a player to pay an upkeep at certain time interval for purchased real property. In Mafia Live!, the users are required to pay an upkeep fee at particular time intervals for certain equipment, such as purchased guns, cars and bulletproof vests.
- **Sale of Real Estate Feature:** Both the You’re a Hottie game and Mafia Live! allow a player to sell back purchased real estate, but at only 50 percent of the price originally paid for the property.
- **“News Feed” Function:** Both the You’re a Hottie game and Mafia Live! have a news feed function. In You’re a Hottie, the “Hottie Feed” displays recent actions a player has taken in the game, such as the purchase of hotties, upkeep fees paid and property purchased, in reverse chronological order according to event. In the “My Hood” area of Mafia Live! the “Recent Fights” feed list a player’s most recent fights, including the attacker and result, in reverse chronological order. A true and correct copy of a screenshot displaying the “Hottie Feed” in You’re a Hottie is included as the first screenshot in Exhibit C.
- **Inventory Feature:** Both applications show the items owned by a player. In You’re a Hottie, the “Your Profile” section lists the hotties and property a player owns. The “My Street Cred” section of Mafia Live! lists the equipment and real estate owned by a player.
- **Cash Statistic Feature:** You’re a Hottie and Mafia Live! both have a cash statistic feature, which tracks the current amount of cash available to a player. The players cash statistic is visible in most screens of both games and can be seen in the “Your Profile” section of You’re a Hottie a few lines under the user’s name. In Mafia Live!, the statistic is visible in the upper left hand corner of the screen in the “My Street Cred” area.
- **Interaction with Non-Players Function:** The Birthday Wall application<sup>5</sup> has a feature that lists individuals within the social network having a birthday that day, and gives the player the ability to click on their picture or profile and interact with them by leaving them a message. In Mafia Live!, the fight function lists individuals playing the game by profile name, and gives you the ability to click on a “Fight” button next to their profile name and interact with them in the form of a virtual fight where the winner gains experience and often “cash.” For both games, the respective functions allow a user to interact with strangers within the network that a player would not otherwise meet.

Indeed, Mafia Live! also contains all three critical functions CLZ identified in its description of the critical functions of the applications sold to Zynga in the APA. *Id.* at ¶ 9.

<sup>5</sup> The Purchased Applications included an application called “Birthday Meaning.” The Birthday Meaning application originally allowed users to submit day and month of their birth for a comment on what their birthday means and a comment on their personal strengths and weaknesses. Chen and Zhang, along with another former CLZ partner Linus Liang, continued working on the Birthday Meaning application as Zynga employees. They added a feature called Birthday Wall where the program displays a list of Facebook users celebrating a birthday that day, and allows a user to send a birthday message to one of the individuals on the Birthday Wall. McEachern Decl., ¶ 5.

1 Specifically, the program ranks players' mafia families in an area of the game called "My Snitch"  
 2 according to those families with the most members, most fights won, most jobs done and those  
 3 with the most experience. *Id.* The game's "Recruit" function allows users to send invitations to  
 4 join the game via email address manually entered or obtained from the Contacts list of a user's  
 5 iPhone. *Id.* The game further allows players to meet other players within the social network  
 6 through the Recruit function or by listing random players' mafia families in the "Fight" area of  
 7 the game and allow a user to pick any listed family to fight. *Id.*

8 Moreover, Mafia Live!'s features and functions are highly similar to Zynga's Mafia Wars.  
 9 In Mafia Live!, the player is an aspiring criminal and mafia member that seeks to acquire wealth  
 10 in the form of virtual "cash," as well as virtual property and increased experience as a mafia  
 11 member. McEachern Decl. ¶ 8. The central objectives of the game are to acquire and increase  
 12 holdings in the form of virtual "cash," equipment such as guns, cars and defensive apparel and  
 13 real estate holdings. *Id.* Another objective is to increase the player's experience points as a mafia  
 14 member by either performing "jobs" consisting of a number of criminal activities such as "Auto  
 15 Theft," or virtually fighting and prevailing over another player's mob family, which also earns  
 16 cash. *Id.* Another primary objective of the game is to grow the player's mafia family by  
 17 communicating with friends within the social network and strangers within the social network  
 18 that a player would not otherwise meet, and convincing them to join a crime family. *Id.* These  
 19 game characteristics are nearly identical to Zynga's Mafia Wars game which is popular on social  
 20 networking websites like Facebook. *Id.*

21 On January 30, 2009, Zynga filed this action and notified Defendants that it considered  
 22 them to be in breach of their contractual obligations and that if the matter was not resolved by the  
 23 morning of Monday, February 2, Zynga intended to seek a temporary restraining order.  
 24 Declaration of Jedediah Wakefield ("Wakefield Decl."), ¶ 2 & Ex. 1. Because the matter had not  
 25 been resolved by then, on the morning of February 2, 2009, Zynga notified Defendants of their  
 26 intention to seek a TRO in this department the next day. *Id.* at ¶ 3 & Ex. 2.

### 27 ARGUMENT

28 Preliminary injunctive relief is particularly appropriate in cases involving breach of a

1 covenant not to compete given by a seller in connection with the sale of a business and its  
 2 associated goodwill. *Alliant Ins. Services, Inc. v. Gaddy*, 159 Cal. App. 4<sup>th</sup> 1292, 1299 (2008)  
 3 (affirming preliminary injunction enjoining seller from competing with buyer in violation of non-  
 4 competition covenant given in connection with sale of business); *Monogram Industries, Inc. v.*  
 5 *Sar Industries, Inc.*, 64 Cal. App. 3d 692, 698 (1996) (same). Here, where both the evidence of  
 6 Defendants' breach and the imminent and irreparable harm Zynga will suffer as a result are clear,  
 7 preliminary injunctive relief is not only appropriate, it is absolutely critical.

8 Trial courts generally consider two factors in determining whether to grant preliminary  
 9 injunctive relief: (1) the likelihood that the plaintiff will ultimately prevail on the merits, and (2)  
 10 the interim harm that the plaintiff is likely to suffer if injunctive relief is denied, compared to the  
 11 interim harm that the Defendant is likely to suffer if injunctive relief is granted. *Alliant*, 159 Cal.  
 12 App. 4<sup>th</sup> at 1299; *People ex rel Gallo v. Acuna*, 14 Cal. 4th 1090, 1109 (1997). A party  
 13 requesting an ex parte temporary restraining order ("TRO") must also show that (1) it is likely to  
 14 suffer great or irreparable injury before a hearing on a noticed motion can be held and (2) there  
 15 has been reasonable notice to the opposing party or its attorneys. Cal. Code of Civ. Proc. §  
 16 527(c). Based on these factors, Zynga is entitled to both a preliminary injunction and an ex parte  
 17 temporary restraining order pending the hearing on that injunction.

18 **V. ZYNGA IS LIKELY TO SUCCEED ON THE MERITS OF ITS CONTRACT**  
 19 **CLAIM**

20 Zynga is substantially likely to succeed on the merits of its claim for breach of contract  
 21 against Defendants. To prevail on such claim, Zynga must show the existence of a valid contract,  
 22 breach of the contract, and damage. See 4 Witkin, California Procedure, Pleading § 476 (4th ed.  
 23 1997) Pleading § 476; *Cal Francisco Inv Corp. v. Vrionis*, 14 Cal. App. 3d 318, 321 (1971); *FPI*  
 24 *Development, Inc. v. Nakashima*, 231 Cal. App. 3d 367, 383 (1991). Zynga will easily do so, as  
 25 the evidence presented with this application clearly demonstrates that (1) CLZ, Chen and Zhang  
 26 each entered into contracts with Zynga's predecessor containing fully enforceable non-compete  
 27 covenants; (2) CLZ, Chen and Ziang are violating these covenants by developing, distributing and  
 28 marketing Mafia Live! less than one year after they sold social networking games with

1 substantially similar features and functions to Zynga; and (3) Zynga will suffer irreparable  
2 damage to its business and associated goodwill as a result of Defendants' unlawful conduct.

3 **A. The Covenants Not To Compete Are Valid And Enforceable**

4 While covenants not to compete generally are not enforceable in California, there is a  
5 longstanding and well-established exception for such covenants when granted by a seller in  
6 connection with the sale of his or her business and its associated goodwill. Section 16601 of the  
7 California Business and Professions Code sets forth the specific circumstances under which such  
8 covenants will be enforced, including, as relevant here, the sale by any owner of a business entity  
9 of "all or substantially all of the operating assets of a division or a subsidiary of the business  
10 entity together with the goodwill of that division or subsidiary." Cal. Bus. & Prof. Code § 16601.  
11 *See also Monogram Industries*, 64 Cal. App. 3d at 698 (discussing Section 16601 and noting that  
12 covenants not to compete arising out of the sale of a business "are more liberally enforced than  
13 those arising out of the employer-employee relationship"). As the language of Section 16601  
14 implies, not all assets of the business entity or any particular division thereof need be sold; the  
15 sale of "substantially all" of such assets is enough. *Fleming v. Ray-Suzuki, Inc.*, 225 Cal. App. 3d  
16 574, 583 (1990) (rejecting argument that section 16601 was inapplicable because seller retained  
17 certain assets relating to the portion of his business that he sold, on the basis that such assets  
18 either were either not related to what was sold or were not "substantial").

19 The rationale for enforcing such non-compete covenants is clear: to prevent a seller from  
20 depriving a buyer of the full value of his or her investment in the assets acquired. *E.g., Alliant*,  
21 159 Cal. App. 4<sup>th</sup> at 1301 (purpose of Section 16601 is "to prevent the seller from depriving the  
22 buyer of the full value of its acquisition, including the sold company's goodwill"); *Monogram*, 64  
23 Cal. App. 3d at 698 (the "thrust of Business and Professions Code section 16601 is to permit the  
24 purchaser of a business to protect himself or itself against competition from the seller which  
25 competition would have the effect of reducing the value of the property right that was acquired").  
26 Obviously, if a seller were permitted to compete head-to-head with the buyer after expressly  
27 promising—and being paid—not to do so, the value of the buyer's investment would be  
28 substantially diminished, if not altogether destroyed.

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1 Here, there can be no dispute that the non-compete covenants agreed to by CLZ, Chen and  
 2 Zhang are fully enforceable.<sup>6</sup> As shown above, each of these covenants was given by the  
 3 respective defendant in connection with the sale of substantially all (if not all) of his or its assets  
 4 relating to the software applications identified in the Asset Purchase Agreement, including but not  
 5 limited to the applications themselves, all related intellectual property rights (including all trade  
 6 secrets and confidential information), all related contracts, all related documentation and records  
 7 (financial, marketing, etc.), and, most significantly for present purposes, “all goodwill” associated  
 8 with such assets. Trader Decl. Ex. B at ¶¶1.1.1.1 – 1.1.1.6.

9 Furthermore, the covenants are limited in scope, merely preventing Defendants from  
 10 developing, distributing or marketing social networking games that would decrease the value of  
 11 the assets Zynga purchased from Defendants, and even then, only for two years. This limited  
 12 restriction is reasonably necessary to protect Zynga’s substantial investment in the games and  
 13 associated assets and goodwill it purchased from Defendants. Accordingly, the covenants easily  
 14 satisfy the requirements of Section 16601, and should be enforced, immediately, to ensure Zynga  
 15 is not deprived of the benefit of its bargain. *See Monogram Industries*, 64 Cal. App. 3d at 698.

16 **B. Defendants Have Breached The Non-Compete Covenants**

17 Defendants’ development, marketing and distribution of Mafia Live! has, without  
 18 question, breached their non-compete obligations to Zynga. Indeed, Defendants have breached  
 19 their obligations in numerous respects.

20 As explained above, Defendants’ non-compete covenants bar them, during Year One,  
 21 from developing, marketing, or distributing applications (1) “for the Facebook platform or other  
 22 social networking platforms”; OR (2) “that have functions and/or features similar to those of [the  
 23 games Zynga purchased from Defendants].” Trader Decl., Ex. B at ¶ 4.2.1 (emphasis added).  
 24 During Year Two, Defendants are barred from developing, marketing, or distributing applications  
 25 “for the Facebook platform or other social networking platforms that have functions and/or  
 26 features substantially similar to those developed, marketed or distributed by [Zynga or otherwise

27 <sup>6</sup> As successor in interest to Presidio Media, Inc., Zynga is entitled to enforce the covenants against Defendants. *See*  
 28 Trader Decl. Ex. A ¶ 4.2.4 (“Any person to whom all or part of the Purchased Assets is sold if this Agreement is  
 assigned, shall be entitled to enforce each of the covenants contained in this Section 4.2”).

1 available on its network]...” *Id.*; see also Ex. C at § 7(b)(ii); Ex. D at § 7(b)(ii). Thus, while the  
 2 restriction during Year Two is somewhat narrower in the sense that an application must be both  
 3 for a social networking platform and have substantially similar features or functions, it is broader  
 4 in the sense that the similarities to which it speaks relate to features or functions of *any* social  
 5 networking game developed, marketed or distributed by Zynga, not just the social networking  
 6 games Zynga purchased from Defendants.

7 As shown by the accompanying evidence, Defendants are engaging in ongoing violations  
 8 of their Year One obligations and are about to be in violation of their Year Two obligations—an  
 9 imminent breach the Court can and should prevent before the associated harm can occur.

10 As to Year One, Defendants began breaching their non-compete obligations from the  
 11 moment they began developing Mafia Live! (time frame currently unknown to Zynga, but clearly  
 12 months before the product was released) because that game is both an application for a “social  
 13 networking platform” and contains features and/or functions that are highly similar to the games  
 14 Zynga purchased from Defendants.

15 *First*, as explained in the accompanying declaration of Scott Dale, the iPhone can be and  
 16 often is used as a social networking platform; indeed, it provides the ideal infrastructure for the  
 17 distribution and play of social networking games, allowing users to download the games and then  
 18 contact and interact with each other during gameplay—the very essence of a social networking  
 19 game. Any contention by Defendants that the term “social networking platform” is necessarily  
 20 limited to web-based platforms like Facebook or MySpace finds no support; indeed, had the  
 21 parties intended the term to be so limited, they could and would have used the term social  
 22 networking “websites” or “services.” Instead, they opted to use the term “platform,” a much  
 23 broader term used to describe *any* hardware architecture, structure or framework on which  
 24 applications (like social networking games) can be run. Dale Decl., ¶¶ 5-7.

25 *Second*, as demonstrated in the accompanying declaration of Kyle McEachern, Mafia  
 26 Live! has numerous features and functions that are similar (in fact, highly similar) to those  
 27 present in the social networking games Defendants sold to Zynga.<sup>7</sup> McEachern Decl. ¶¶ 11-19.

28 <sup>7</sup> Zynga does not contend (at least not at this time) that Mafia Live! shares the same expression, imagery or



1 Given the substantial similarities between these features and functions, including as to features  
 2 and functions that Defendants represented were critical components of the games they sold  
 3 Defendants (see Trader Decl. ¶6 & Ex. A) they cannot now credibly contend that their  
 4 development, distribution, and marketing and Mafia Live! does not run afoul of their contractual  
 5 obligations.

6 As to their Year Two obligations, Defendants will be in breach thereof the moment Year  
 7 Two begins, unless they are enjoined. As shown above, Mafia Live! is both an application for  
 8 social networking platforms and contains features or functions that are substantially similar to  
 9 Zynga's Mafia Wars and upcoming release of Mafia Wars for the iPhone. McEachern Decl. ¶¶ 8-  
 10 9. Thus, both criteria for violating Defendants' Year Two obligations will be met.

11 Significantly, although Defendants' Year One obligations end shortly, an injunction is still  
 12 needed—even in the absence of any violation of Defendants' Year Two obligations—to prevent  
 13 the further, compounding harm Zynga will suffer from the headstart to market Defendants  
 14 unfairly gained as a result of their breach of their Year One obligations. Plainly, Defendants  
 15 began developing Mafia Live! well before the end of Year One; indeed, as explained in the  
 16 accompanying declaration of Scott Dale, development likely started many months ago (possibly  
 17 even when Defendants were still employed by Zynga). Dale Decl. ¶ 3. Thus, even if a violation  
 18 of the Year Two obligations never occurs, an injunction is still needed to prevent the harm that  
 19 began in Year One from continuing to flow into Year Two.

20 **VI. ZYNGA IS LIKELY TO SUCCEED ON THE MERITS OF ITS UNFAIR**  
 21 **COMPETITION CLAIM**

22 There is also little doubt Zynga will prevail on the merits of its claim for violation of  
 23 California Business & Professions Code Section 17200, which provides a separate and  
 24 independent basis for injunctive relief. Section 17200 provides a cause of action for parties  
 25 injured by any "unlawful, unfair and fraudulent business act or practice" to seek injunctive relief.  
 26 *CRST Van Expedited, Inc. v. Werner Enters., Inc.*, 479 F.3d 1099, 1107 (9th Cir. 2007).

27 Here, Defendants' development, distribution and marketing of Mafia Live! in direct  
 28 proprietary code as any of the games Zynga purchased from Defendants, such as might give rise to a claim for  
 copyright infringement or trade secret misappropriation.

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1 violation of their non-compete obligations would be an unfair and unlawful practice in violation  
 2 of Cal. Bus. & Prof. Code § 17200. Moreover, to the extent Defendants began developing Mafia  
 3 Live! while still employed by Zynga and/or based on Zynga's confidential information or  
 4 business strategies, which it may well have been, their conduct would violate Section 17200  
 5 irrespective of whether the information taken from Zynga constitutes a "trade secret" under  
 6 California's Uniform Trade Secrets Act. *See Courtesy Temporary Serv., Inc. v. Camacho*, 222  
 7 Cal. App. 3d 1278,1291 (1990) (even if the confidential information taken from former employer  
 8 was not a trade secret, its use violates Section 17200); *Readylink Healthcare v. Cotton*, 126 Cal.  
 9 App. 4th 1006, 1020-21 (2005) (improper use of confidential information taken from former  
 10 employer properly enjoined as a violation of Section 17200). Accordingly, Zynga is also entitled  
 11 to injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

12 **VII. ZYNGA WILL BE IRREPARABLY HARMED UNLESS DEFENDANTS ARE**  
 13 **ENJOINED FROM VIOLATING THEIR NONCOMPETE OBLIGATIONS**

14 Absent a TRO, Zynga will suffer immediate and irreparable harm. Defendants have  
 15 developed, marketed and distributed a social networking game during Year One (and will  
 16 continue to do so during Year Two unless enjoined) that contains the same core features and  
 17 functions they represented were critical to the success of the games they sold to Zynga. The  
 18 presence of Mafia Live! on the market, approximately six weeks ahead of Zynga's scheduled  
 19 release of a directly competitive game, is likely to cause serious, incalculable and irreparable  
 20 harm to Zynga, by, among other things, displacing demand for Zynga's product, saturating the  
 21 market for Mafia-themed games for the iPhone, and damaging the goodwill associated with Mafia  
 22 Wars and the myriad other social networking games Zynga purchased from Defendants. Trader  
 23 Decl. ¶¶ 28-29. This harm is compounding every day, as Defendants are gaining market share  
 24 and will be more and more difficult to displace. *Id.*

25 In this situation, courts have no trouble concluding that monetary damages will be  
 26 incalculable and inadequate to make Zynga whole. *See Basicomputer Corp. v. Scott*, 973 F.2d  
 27 507, 511-12 (6<sup>th</sup> Cir. 1992) (competitive losses and harm to goodwill resulting from breach of  
 28 non-compete covenant given in connection with sale of a business constitute irreparable and

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1 incalculable injury justifying preliminary injunctive relief); *Prison Health Services, Inc. v. Emre*  
 2 *Umar and Correctional Medical Care, Inc.*, 2002 U.S. Dist. LEXIS 12267, \*24-25 (E.D. Penn.  
 3 May 8, 2002) (harm resulting from breach of non-compete covenant given in connection with sale  
 4 of business is irreparable, resulting not from the initial breach alone, but from “the threat of the  
 5 unbridled continuation of the violation and the resultant incalculable damage to the former  
 6 employer’s business”); *Sizewise Rentals, Inc. v. Mediq/PRN Life Support Services, Inc.*, 87 F.  
 7 Supp. 2d 1194, 1200 (D. Kan. 2000) (recognizing that damage to goodwill is irreparable).  
 8 Indeed, given the compounding nature of the harm that Zynga is suffering, a TRO enjoining  
 9 Defendants from further distribution of Mafia Live pending the hearing on Zynga’s motion for  
 10 preliminary injunction is needed to preserve the status quo.

11 Furthermore, the parties specifically discussed and agreed that Defendants’ non-  
 12 competition obligations were so important to Zynga, and to the value of the goodwill associated  
 13 with the games Zynga purchased from Defendants, that a breach of those obligations would cause  
 14 “immediate and irreparable damage” to Zynga. Trader Decl. Ex. C at § 7(e); Ex D at § 7(e); *see*  
 15 *also* Trader Decl. Ex. B at ¶ 4.2.4 (Asset Purchase Agreement) (reflecting CLZ’s agreement that a  
 16 violation of the non-compete obligation would entitle Zynga to seek “a temporary, preliminary  
 17 and permanent injunction enjoining or restraining CLZ from any violation or threatened violation  
 18 of the restrictive covenants contained herein, without the necessity of proving actual damages or  
 19 posting a bond or other undertaking”) (emphasis added).

20 Under these circumstances, injunctive relief is entirely appropriate. Cal. Civ. Proc. Code  
 21 § 526; *see also American Credit Indemnity Co. v. Sacks*, 213 Cal. App. 3d 622, 637 (1989)  
 22 (injunctive relief required where monetary damages inadequate to remedy wrongful conduct).

### 23 **VIII. THE BALANCE OF EQUITIES STRONGLY FAVORS ZYNGA**

24 The balance of equities likewise mandates that a temporary restraining order issue. If  
 25 granted, the requested restraining order would work little or no hardship on Defendants, who  
 26 merely would be enjoined from acts that fall squarely within the restrictions imposed by the non-  
 27 compete covenants to which they knowingly and freely agreed, and for which they have been  
 28

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1 handsomely paid.<sup>8</sup> This is bargained-for legal detriment for which Defendants have no right to  
 2 complain. *See Sizewise Rentals*, 87 F. Supp. 2d at 1200. Moreover, Mafia Live! is only one of at  
 3 least five other games for the iPhone that Defendants are marketing and distributing (none of  
 4 which appear to be social networking games). Trader Decl. ¶ 30 & Ex. F. Zynga is not asking  
 5 the Court to enjoin Defendants from marketing or distributing these games. Defendants can thus  
 6 continue to realize revenue and gain market share for all of the other games they already have on  
 7 the market, and any additional ones they release that are not in breach of their obligations to  
 8 Zynga.

9 On the other hand, the harm to Zynga should no TRO issue would be incalculable. In the  
 10 absence of the restraining order, Defendants will continue to gain market share in the highly  
 11 competitive space for Mafia-themed games for the iPhone, potentially saturating the market and  
 12 supplanting demand for Zynga's upcoming release of Mafia Wars. Indeed, Zynga may be unable  
 13 to sell Mafia Wars for the iPhone to persons who have already purchased Mafia Live! Trader  
 14 Decl., ¶¶ 28-29. On these facts, a restraining order is plainly critical.

#### 15 **IX. A BOND IS NOT NECESSARY HERE**

16 The Court is not required to order Zynga to post a bond if the TRO is granted. Weil &  
 17 Brown, *California Practice Guide: Civil Procedure Before Trial* § 9:603, at 9(II)-26-27 (2008).  
 18 Nor is one appropriate here. As noted, above, the parties expressly understood and agreed that  
 19 the non-compete covenants were such a critical part of their deal that their violation would entitle  
 20 Zynga to a TRO (and preliminary injunction) "without the necessity of proving actual damages or  
 21 posting a bond or other undertaking." Trader Decl. Ex. B at ¶ 4.2.4 (emphasis added).  
 22 Particularly in light of the fact that the damages Defendants might suffer if a TRO issues are  
 23 dwarfed by the irreparable harm Zynga is *certain* to suffer if it does not, the Court should uphold  
 24 this aspect of the parties' agreement and not require Zynga to post a bond pursuant to Cal. Code  
 25 of Civil Proc. §529.1.

26  
 27 <sup>8</sup> Drafts of the APA and Chen's and Zhang's employment agreements were sent to counsel for CLZ and the  
 28 individual sellers prior to execution of the contracts. Counsel for CLZ and the individual sellers participated in  
 negotiating the scope, duration and subject matter of the limited covenants not to prior to execution of the contracts.  
 Trader Decl. ¶15.

1 **X. CONCLUSION**

2 For the foregoing reasons, Zynga respectfully requests that the Court (1) enter a  
3 Temporary Restraining Order against Defendants CLZ Concepts d/b/a Aftershock Innovations  
4 LLC, Jeff Chen and James Zhang in the proposed form submitted herewith; and (2) issue an order  
5 to show cause why a preliminary injunction should not be granted.

6 Dated: February 3, 2009

FENWICK & WEST LLP

7  
8 By:   
Jedediah Wakefield

9 Attorneys for Plaintiff  
10 ZYNGA GAME NETWORK, INC.  
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ATTORNEYS AT LAW  
SAN FRANCISCO

# **EXHIBIT F**

1 JEDEDIAH WAKEFIELD (CSB No. 178058)  
 2 [jwakefield@fenwick.com](mailto:jwakefield@fenwick.com)

3 JENNIFER L. KELLY (CSB NO. 193416)  
 4 [jkelly@fenwick.com](mailto:jkelly@fenwick.com)

5 FENWICK & WEST LLP  
 6 555 California Street, 12th Floor  
 7 San Francisco, CA 94104  
 8 Telephone: (415) 875-2300  
 9 Facsimile: (415) 281-1350

10 HENRY Z. CARBAJAL III (CSB No. 237951)  
 11 [hcarbajal@fenwick.com](mailto:hcarbajal@fenwick.com)

12 FENWICK & WEST LLP  
 13 Silicon Valley Center  
 14 801 California Street  
 15 Mountain View, CA 94041  
 16 Telephone: (650) 988-8500  
 17 Facsimile: (650) 938-5200

18 Attorneys for Plaintiff  
 19 ZYNGA GAME NETWORK, INC.

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 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO

16 ZYNGA GAME NETWORK, INC., a  
 17 Delaware corporation,

18 Plaintiff,

19 v.

20 CLZ CONCEPTS D/B/A AFTERSHOCK  
 21 INNOVATIONS LLC, JEFF CHEN AND  
 22 JAMES ZHANG,

23 Defendants.

Case No. CGC-09-484557

**DECLARATION OF SCOTT DALE IN SUPPORT OF  
 EX PARTE APPLICATION FOR TEMPORARY  
 RESTRAINING ORDER TO SHOW CAUSE RE  
 PRELIMINARY INJUNCTION**

Date: February 3, 2009  
 Time: 11:00 a.m.  
 Dept.: 301  
 Judge: Hon. Peter Busch

Date of Filing: February 3, 2009  
 Trial Date: No date set

24 I, Scott Dale, declare as follows:

25 1. I am Vice President of Engineering and have been employed at Zynga Game  
 26 Network, Inc. for approximately 15 months. I graduated from Stanford University in 1991 with a  
 27 Bachelor's degree in Computer Science and have many years of experience in software  
 28 development. I make this declaration of my own personal knowledge, except to any extent

DECL. OF SCOTT DALE ISO TRO AND OSC RE  
 PRELIM. INJUNCTION

CASE NO. CGC-09-484557

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1 otherwise specified. If called as a witness, I could and would testify competently to the facts set  
2 forth herein.

3 **Development Time for Social Networking Applications**

4 2. Zynga is a software company that creates and markets games and other  
5 applications for social networking platforms. As Vice President of Engineering at Zynga, I am  
6 familiar with the development cycle for social networking games, including those made for the  
7 iPhone. I have played and analyzed the Apple iPhone-based game "Mafia Live!," which I  
8 understand was created by and is being distributed by former Zynga employees Jeff Chen and  
9 James Zhang in a new company they have formed, called Aftershock. Jeff Chen and James  
10 Zhang worked at Zynga until September 2, 2008. According to the Aftershock website, they  
11 released the Mafia Live! game on January 19, 2009.

12 3. Based on my experience, I would estimate that development on the Mafia Live!  
13 game began months before it was released last month. Porting an *existing* social networking  
14 game—one where code has already been written—to the iPhone would take approximately eight  
15 weeks. This assumes the use of four full-time software developers in porting the game, or 32  
16 developer weeks. Thus, the development cycle would be substantially longer with the  
17 involvement of only two software developers, and in my experience could double the game  
18 creation cycle to 16 weeks. Also, development generally takes substantially longer if there is no  
19 shared code to re-use. The level of game complexity can also lengthen development time.  
20 Games with sophisticated game mechanics and those that leverage social networks and contacts  
21 during game play, like Mafia Live!, typically take longer to create than games with simpler  
22 functions.

23 4. I worked at Zynga while it employed Jeff Chen, James Zhang and Linus Liang, the  
24 former partners of CLZ Concepts. I recall that Mr. Chen and Mr. Zhang received internal  
25 information about Zynga product trends, and important gaming features according to Zynga's  
26 internal research and user preferences. Mr. Chen and Mr. Zhang were also present for strategy  
27 meetings where we discussed internal product plans, including our plans to launch our Mafia  
28 Wars game on the iPhone.



1 **The iPhone and Social Networking**

2       5. Zynga has long-planned to utilize the iPhone for distribution of its social  
3 networking games, because of its inherent capabilities for use as a social networking platform.  
4 For example, in November 2008, Zynga announced the release of a mobile version of its popular  
5 Texas Hold 'Em game called "Live Poker." An iPhone version of Zynga's popular "Mafia Wars"  
6 game is planned for release at the end of this month.

7       6. Although the iPhone can do far more than social networking (e.g., it can be used as  
8 a phone, camera, or music player), it is also a social networking platform—that is, an architecture,  
9 structure or framework that supports social networking applications. While many popular social  
10 networking platforms incorporate the use of websites (like [www.facebook.com](http://www.facebook.com)), social  
11 networking *sites* and social networking *platforms* are not coextensive. From an application  
12 development standpoint, the iPhone possesses the primary characteristics of social networking  
13 platforms. Like other social networking platforms, the iPhone provides an infrastructure for the  
14 distribution of social networking applications. The iPhone's application programming interface  
15 also permits applications to access the iPhone's social contact information—specifically, its  
16 Address Book and Contacts list. And the iPhone further provides "viral" messaging channels to  
17 allow applications to contact others on the iPhone network. Using this platform, game  
18 applications for the iPhone can allow iPhone users to connect and interact with other iPhone users  
19 as part of social networking games or other applications. The foregoing characteristics make the  
20 iPhone a social networking platform.

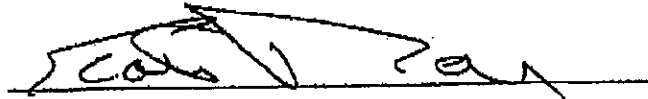
21       7. Zynga is in the business of developing social networking games, and is only  
22 interested in developing games for the iPhone *because* of its capabilities as a social networking  
23 platform. Competitors of Zynga, who develop and market social networking games, also appear  
24 to share the view of the iPhone as a social networking platform, as illustrated by Social Gaming  
25 Network, Inc.'s ("SGN") recent development of its iPhone based game iFun. A true and correct  
26 copy of the front page of SGN's website at [www.sgn.com](http://www.sgn.com), with a description of iFun, is attached  
27 hereto as Exhibit A.

28

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1 copy of the front page of SGN's website at www.sgn.com, with a description of iFun, is attached  
2 hereto as Exhibit A.

3 I declare under penalty of perjury under the laws of the United States of America and the  
4 State of California that the foregoing is true and correct, and that this declaration was executed  
5 this 2nd day of February, 2009, in San Francisco, California.

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8 Scott Dale  
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# EXHIBIT A

**SGN** SOCIAL GAMING NETWORK [Home](#) [Studio](#) [Company](#) [Developers](#) [Blog](#)

# iFun

SGN is proud to announce the latest innovation in mobile and social gaming. iFun turns your iPhone or iPod Touch into a game controller and let's you experience social gaming like you never have before.

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[iHowls](#) VOTE NOW ON  
**Crunchies**  
Best Time Sink Site  
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[Facebook @myspace h5](#)

[Facebook](#)

1 million daily players 100 million virtual gifts sent over 50 million installed users

[SGN Press Contact](#) [SGN Jobs Contact](#)

# **EXHIBIT G**

1 JEDEDIAH WAKEFIELD (CSB No. 178058)  
 2 jwakefield@fenwick.com

3 JENNIFER L. KELLY (CSB NO. 193416)  
 4 jkelly@fenwick.com

5 FENWICK & WEST LLP  
 555 California Street, 12th Floor  
 6 San Francisco, CA 94104  
 Telephone: (415) 875-2300  
 Facsimile: (415) 281-1350

7 HENRY Z. CARBAJAL III (CSB No. 237951)  
 8 hcarbajal@fenwick.com

9 FENWICK & WEST LLP  
 Silicon Valley Center  
 801 California Street  
 Mountain View, CA 94041  
 Telephone: (650) 988-8500  
 Facsimile: (650) 938-5200

10 Attorneys for Plaintiff  
 11 ZYNGA GAME NETWORK, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 COUNTY OF SAN FRANCISCO

14  
 15 ZYNGA GAME NETWORK INC., a  
 Delaware corporation,

16 Plaintiff,

17 v.

18 CLZ CONCEPTS D/B/A AFTERSHOCK  
 19 INNOVATIONS LLC, JEFF CHEN AND  
 JAMES ZHANG.

20 Defendants.

Case No. CGC-09-484557

21 **DECLARATION OF KYLE McEACHERN IN  
 22 SUPPORT OF *EX PARTE* APPLICATION FOR  
 23 TEMPORARY RESTRAINING ORDER TO SHOW  
 24 CAUSE RE PRELIMINARY INJUNCTION**

25 Date: February 3, 2009  
 26 Time: 11:00 a.m.  
 27 Dept.: 301  
 28 Judge: Hon. Peter Busch

Date of Filing: February 3, 2009  
 Trial Date: No date set

I, Kyle McEachern, declare as follows:

1. I am the Director of Product, MMO Studio at Zynga Game Network Inc. ("Zynga")  
 and have been employed at Zynga for approximately 12 months. I make this declaration of my  
 own personal knowledge, except to any extent otherwise specified. If called as a witness, I could  
 and would testify competently to the facts set forth herein.

2. I am familiar with the circumstances of Zynga's (formerly Presidio Media, Inc.)

1 February 2008 Asset Purchase Agreement with CLZ Concepts, Jeff Chen, James Zhang and  
2 Linus Liang, and the February 2008 Employment Agreements Zynga has with Mr. Chen and Mr.  
3 Zhang. I am also aware that CLZ, Mr. Chen and Mr. Zhang agreed not to compete with Zynga  
4 for a limited time through "the development, marketing or distribution of software applications  
5 that have functions and/or features similar to those of the Purchased Applications" according to  
6 the Asset Purchase Agreements and Employment Agreements submitted as Exhibits B-D to the  
7 accompanying declaration of Zynga's Executive Vice President of Business Development,  
8 Andrew Trader.

9 3. I am familiar with the "Purchased Applications" CLZ sold to Zynga, which are  
10 identified in schedule 1.1.1.1 of the Asset Purchase Agreement. I am also aware that in  
11 connection with the acquisition of CLZ, Mr. Chen and Mr. Zhang accepted employment with  
12 Zynga. I was an employee of Zynga for most of the term of Mr. Chen and Mr. Zhang's  
13 employment with Zynga.

14 4. Included among the Purchased Applications was the most popular application CLZ  
15 had made -- its first online game -- called "You're a Hottie," developed for use on the Facebook  
16 and Bebo social networks. In the You're a Hottie game, the central objective is to increase your  
17 net worth in the form of holdings of virtual "cash," pictorial representations of other game  
18 participants called "hotties," and virtual property. The game requires and rewards interaction  
19 with friends on the social network and/or strangers within the network that a player would not  
20 otherwise communicate with or meet.

21 5. The Purchased Applications also included an application called "Birthday  
22 Meaning." The Birthday Meaning application originally allowed users to submit day and month  
23 of their birth for a comment on what their birthday means and a comment on their personal  
24 strengths and weaknesses. Mr. Chen and Mr. Zhang, along with another former CLZ partner  
25 Linus Liang, continued working on the Birthday Meaning application as Zynga employees. They  
26 added a feature called Birthday Wall where the program displays a list of Facebook users  
27 celebrating a birthday that day, and allows a user to send a birthday message to one of the  
28 individuals on the Birthday Wall.

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1           6. I understand that during negotiations over the purchase of CLZ's assets, CLZ  
2 provided a PowerPoint presentation (attached as Exhibit A to the Trader declaration) that  
3 described the essential features of its software applications. The essential application features  
4 discussed by CLZ identify a ranking function, a "send" function and a "meet" function.

5           7. I am aware that a few months after Mr. Chen and Mr. Zhang departed from Zynga,  
6 they formed another company call Aftershock Innovations LLC. I am also aware that on or about  
7 January 19, 2009 Aftershock began selling a social networking game for the Apple iPhone called  
8 Mafia Live! I have analyzed and played Mafia Live! and am familiar with the features and  
9 functions of the game.

10           8. In Mafia Live!, the player is an aspiring criminal attempting to form a powerful  
11 mafia family. The central objectives of the game are to acquire and increase holdings in the form  
12 of virtual "cash," equipment such as guns, cars and defensive apparel and real estate holdings.  
13 Another objective is to increase your experience points as a mafia member by either performing  
14 "jobs" consisting of a number of criminal activities such as "Auto Theft," or virtually fighting and  
15 prevailing over another player's mob family, which also earns cash. Another primary objective  
16 of the game is to grow your mafia family by communicating with friends within the social  
17 network and strangers within the social network that you would not otherwise meet and  
18 convincing them to join your crime family. These game characteristics are nearly identical to  
19 Zynga's Mafia Wars game which is popular on social networking websites like Facebook.

20           9. From my review of the game, Mafia Live! contains all three critical functions that  
21 CLZ identified from its description of the critical functions of the applications sold to Zynga in  
22 the Asset Purchase Agreement. The program *ranks* players' mafia families in an area of the game  
23 called "My Snitch" according to those families with the most members, most fights won, most  
24 jobs done and those with the most experience. The game's "Recruit" function allows users to  
25 *send* invitations to join the game via email address manually entered or obtained from the  
26 Contacts list of a user's iPhone. The game further allows players to *meet* other players within the  
27 social network through the Recruit function or by listing random players' mafia families in the  
28 "Fight" area of the game and allow a user to pick any listed family to fight.



1           10. I have compared the features and functions of the Mafia Live! game with the  
2 Purchased Applications Zynga obtained from CLZ. There are several striking similarities among  
3 Mafia Live! and the Purchased Applications.

4           11. **Leaderboard Feature:** Both You're a Hottie and Mafia Live! have a feature that  
5 shows leading participants in each game. In the You're a Hottie Purchased Application, there is a  
6 leaderboard of hotties that have accrued the most value, or "Top Hotties," and hottie owners with  
7 the most net worth in cash and hotties, called "Top Owners." Mafia Live! also has a leaderboard  
8 function that is unlocked after several levels of play called "My Snitch" which list the families  
9 with the most members, most fights won, most jobs done and those with the most experience.  
10 True and correct copies of screenshots of the You're a Hottie leaderboards followed by the "My  
11 Snitch" area of Mafia Live! are attached hereto as **Exhibit A**.

12           12. **Recruit Function:** Both You're a Hottie and Mafia Live! have a feature that  
13 allows recruiting of other players to the game. In the You're a Hottie application, the application  
14 lists contacts, or "friends," to whom the player can send invitations to request that they join and  
15 participate. In Mafia Live!, the "Recruit" function allows users to send invitations to join the  
16 game via email address manually entered or obtained from the Contacts list of a user's iPhone.  
17 Additionally, both games give incentives for the recruitment of additional participants. You're a  
18 Hottie provides a virtual cash bonus for every one of your friends participating in the game.  
19 Mafia Live! provides a "loyalty" points incentive that can be used to replenish health, energy or  
20 stamina statistics of the player. True and correct copies of screenshots of the You're a Hottie  
21 invitation area followed by the "Recruit" area of Mafia Live! are attached hereto as **Exhibit B**.

22           13. **Purchase of Property Feature:** Both You're a Hottie and Mafia Live! have a  
23 feature that allows the purchase of property. In the You're a Hottie application, the game allows  
24 for the purchase of real property in the form of mansions and residences to store a player's  
25 hotties. Storage of hotties in a purchased property allows the hottie to accrue additional value.  
26 Mafia Live! likewise allows a player to purchase real property in the form of yards, lots and  
27 various businesses. A player accrues additional cash at certain intervals as the holder of real  
28 property. True and correct copies of screenshots of the You're a Hottie property purchase area

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1 followed by the "Real Estate Agent" area of Mafia Live! are attached hereto as **Exhibit C**.

2       14.   **Upkeep Payment Feature:** Both games have an "upkeep" payment feature,  
3 which requires users to pay an upkeep fee while they own certain property. In the You're a  
4 Hottie application, the game requires a player to pay an upkeep at certain time interval for  
5 purchased real property. In Mafia Live!, the users are required to pay an upkeep fee at particular  
6 time intervals for certain equipment, such as purchased guns, cars and bulletproof vests. A true  
7 and correct copy of a screenshot displaying the upkeep obligations in You're a Hottie is included  
8 as the first screenshot in Exhibit C. A true and correct copy of a screenshot showing the Mafia  
9 Live! upkeep feature is attached hereto as **Exhibit D**.

10       15.   **Sale of Real Estate Feature:** Both the You're a Hottie game and Mafia Live!  
11 allow a player to sell back purchased real estate, but at only 50 percent of the price originally paid  
12 for the property.

13       16.   **"News Feed" Function:** Both the You're a Hottie game and Mafia Live! have a  
14 news feed function. In You're a Hottie, the "Hottie Feed" displays recent actions a player has  
15 taken in the game, such as the purchase of hotties, upkeep fees paid and property purchased, in  
16 reverse chronological order according to event. In the "My Hood" area of Mafia Live! the  
17 "Recent Fights" feed list a player's most recent fights, including the attacker and result, in reverse  
18 chronological order. A true and correct copy of a screenshot displaying the "Hottie Feed" in  
19 'You're a Hottie is included as the first screenshot in Exhibit C. A true and correct copy of a  
20 screenshot showing the Mafia Live! Recent Fight feed is attached hereto as **Exhibit E**.

21       17.   **Inventory Feature:** Both applications show the items owned by a player. In  
22 You're a Hottie, the "Your Profile" section lists the hotties and property a player owns. The "My  
23 Street Cred" section of Mafia Live! lists the equipment and real estate owned by a player. True  
24 and correct copies of screenshots of the You're a Hottie "Your Profile" area followed by the "My  
25 Street Cred" area of Mafia Live! are attached hereto as **Exhibit F**.

26       18.   **Cash Statistic Feature:** You're a Hottie and Mafia Live! both have a cash  
27 statistic feature, which tracks the current amount of cash available to a player. The players cash  
28 statistic is visible in most screens of both games and can be seen in the "Your Profile" section of

1 You're a Hottie a few lines under the user's name. In Mafia Live!, the statistic is visible in the  
 2 upper left hand corner of the screen in the "My Street Cred" area. The statistics can be seen in the  
 3 screenshots attached as Exhibit F.

4 19. **Interaction with Non-Players Function:** The Birthday Wall application has a  
 5 feature that lists individuals within the social network having a birthday that day, and gives the  
 6 player the ability to click on their picture or profile and interact with them by leaving them a  
 7 message. In Mafia Live!, the fight function lists individuals playing the game by profile name,  
 8 and gives you the ability to click on a "Fight" button next to their profile name and interact with  
 9 them in the form of a virtual fight where the winner gains experience and often "cash." For both  
 10 games, the respective functions allow a user to interact with strangers within the network that a  
 11 player would not otherwise meet. True and correct copies of screenshots of the Birthday Wall  
 12 area followed by the "Fight" area of Mafia Live! are attached hereto as Exhibit G.




13 I declare under penalty of perjury under the laws of the State of California that the  
 14 foregoing is true and correct, and that this declaration was executed this 3rd day of February,  
 15 2009, in San Francisco, California.


16  
 17   
 18 \_\_\_\_\_  
 19 Kyle McEachern

# EXHIBIT A





Cash	Health	Energy	Stamina	Exp	Level
\$3836	14106	2121	1313	1231.1346	18
720	237				
[53889]					
<u>Back to My Hood</u>					
My Switch					
Largest Families (no mercenaries)					
Family		Real Members			
Unleashable Family		3189			
Big Ben Family		2649			
TRIPLE BEAM DREAM Family		2570			
Khaistekid Family		2569			
The Law Family		2332			
Bambino Family		2222			
					
My Hood	Boys	Fam	Fam	Fam	Fam

2:21 PM					
Most Fearless					
Family		Fights Won			
Country Boys of LA Family		3743			
Crazy Wn Family		3104			
Phoneshopt R Family		3093			
teh.Rabbi Family		2606			
The sir Family		2525			
Dominic D Family		2524			
Hopkins Family		2513			
Dissonant Family		2460			
Jesters Family		2401			
Basile Family		2312			
Most Reckless					
					
My Hood	Boys	Fam	Fam	Fam	Fam

**EXHIBIT B**





## Redfern Rejected Invites

\_\_\_\_\_

## Other Family Links



EXHIBIT C

**zynga**

**Play Sea Wars**  
Red pages 4 and 5 are the

**X. Show Me**

**Our Games:**

**You're a Hottie**

State a better

**Play Pirates: Rule the Caribbean! Fight with hotties! Your Friends Updates TOS**

**Mears List Art Contest Coming soon: Hostile Market economy**

Send premium gift just click. Send gift on their profile. Select on changes every day!  
Earn money with Rate a Hotel! - See two-way matches on your friends' page!

Andy says: Take my Houliess... I give up until it's fixed... - Shout!

### Available Mansions

**Mansions are houses for your hotties. Placing them in mansions increases their price every 2 hours. However, mansions have an initial cost and also a daily upkeep fee. If you can't meet the upkeep you'll lose your mansion.**



### Three Bedroom

upkeep (every 2 hours)  
max bottle price increase  
(every 2 hours)  
initial cost  
rooms

**Buy this Mansion**

**Your Mansions**  
You don't have any mansions yet! Buy one about.

### Earn 145 Reward Points - Get 80¢ of Crown's Feast with 10 Dollars

**Tired of Dark Circles and Crow's Feet? Try IQ Dermal's Eye Recovery System FREE! Firm for younger-looking eyes! Smooth**

[illegible]

## Farrah Fawcett Points

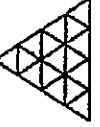
### Cliff Residence



(တၢ်ပၤနီၤနီၤ)  
ပၤတၢ်ပၤတၢ်ပၤတၢ်ပၤ  
(တၢ်ပၤနီၤနီၤ) ပၤတၢ်ပၤ  
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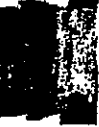
**Buy this Mansion**

## How Many Triangles?



**97.91% of Americans got this question wrong. Will you? Find out instantly if your answer is correct.**

**Get Your Stimulus Check**



I paid \$2.99 and Opana gave me \$12,000 in less than 30 days. Get yours

**More Ads**

Applications

11:41:36

4:01 PM

Cash	Health	Energy	Stamina	Exp	Level
56,007	26,107	11/11	44	75/105	5

55:44 1:17

[58]

**Objective: Use All Zen Points**

- Upgrade your character by using the Zen Points under the My Head Tab. Below is the goal.
- Remember that all items have Zen Points when you land on.

**Back to My Head**City Head: 100,000,000**Buy Land**

Land Type	Sell?	Cost/Income
Empty Yard		Cost: \$4.5K +850 60 min

Commercial

Lot

Cost: \$50K  
+850K  
60 min



My Head

**EXHIBIT D**

AT&amp;T 3G

8:44 PM



ATTENTION

Defender  
 Element: 1

Stack

\$200  
 attack: 0  
 defense: 1

Flower  
 West

\$60K  
 attack: 2  
 defense: 4  
 upkeep: \$400

Armored  
 West

\$16K  
 attack: 4  
 defense: 7  
 upkeep: \$1300

Vehicles

Town Car

\$20K  
 attack: 3  
 defense: 3  
 upkeep: \$250



My Home

Home

Home

Home

EXHIBIT E



- Enlightenment Dealer
- My Family
- Godfather
- My Street Cred
- Banker
- Unlabeled
- Dal Dathore
- Zen Master

You were attacked by The curst! You LOST the fight against The curst...lost \$621, and took 14 damage

You were attacked by swaggar! You LOST the fight against swaggar...lost \$738, and took 9 damage

You were attacked by Chahitari! You LOST the fight against Chahitari...lost \$859, and took 15 damage

You were attacked by Chahitari! You LOST the fight against Chahitari...lost \$1011, and took 7 damage

You were attacked by Chahitari! You LOST the fight



**EXHIBIT F**



Cash: 87123    Health: 45/100    Energy: 21/21    Stamina: 12/13    Exp: 12311346    Level: 15  
 2827    345  
 [5859]

Back to My Hood

My Stats: Delinquentes, Capitalist (L-15)

Private Stats

- Cashflow: \$350 (Income[0] - Expenses[0])

Public Stats

Family Health Energy Stamina Attack Defense


2    100    21    13    20    15

Accomplishments

Fights Won Fights Lost Jobs Done


282    110    130

Items



My Hood    Town    Real Estate    Town

Bar: 1    1    1    Special: 1  
 Pistol: 2




Dual    AK-47    Revolver    M-16    Armored  
 Pistols: 1    Semi-Auto: 2    Vest: 1    Rifle: 1    Suit: 1

Town

Car: 1

Real Estate



Shack: 2    Hot Dog Stand: 1    Gas Station: 1

My Hood    Town    Real Estate    Town

EXHIBIT G

<http://apps.facebook.com/birthdaymeaning/wall/main>

## What Does My Birthday Mean?

[Birthday Meaning](#) [Birthday Wall Home](#) [YOUR Wall](#) [Birthday Points](#) [My Facebook Game](#)

### Today's Birthdays...

Send birthday wishes to all of these people!

<b>Rick</b> (fbid)	<b>Mike</b> (fbid)	<b>Gurneet</b> (fbid)
Send birthday wishes!	Send birthday wishes!	Send birthday wishes!
<b>Blargay</b> (fbid)	<b>Glanna</b> (fbid)	<b>Lisa</b> (fbid)
Send birthday wishes!	Send birthday wishes!	Send birthday wishes!
<b>Jacqi</b> (fbid)	<b>Elenaku</b> (fbid)	<b>Debbi</b> (fbid)
Send birthday wishes!	Send birthday wishes!	Send birthday wishes!
<b>Tom</b> (fbid)	<b>Enya</b> (fbid)	<b>Kelly</b> (fbid)
Send birthday wishes!	Send birthday wishes!	Send birthday wishes!
<b>Charlotte</b> (fbid)	<b>Barbara</b> (fbid)	<b>Anonymous</b> (fbid)
Send birthday wishes!	Send birthday wishes!	Send birthday wishes!

### Recent Birthday Wishes...

<b>Kim Ling</b> (fbid)	<b>Happy Birthday to you!</b> (fbid)	<b>Stidharth Brahmbhatt</b> (fbid)
at 9:48pm	at 9:46pm	at 9:41pm
<b>Lisa Mullings</b> (fbid)	<b>Happy B-Day!!! Wishing you much success and happiness on ur day!! Enjoy!!</b> (fbid)	<b>Krishna Jayaraman</b> (fbid)
at 9:46pm	at 9:46pm	at 8:55pm
<b>happy bith day to u all live hard and party harder</b> (fbid)	<b>happy birthday! may all your wishes come true!! god bless!!</b> (fbid)	<b>Jasmin Iam Love</b> (fbid)
at 8:41pm	at 8:40pm	at 8:40pm

### ADVERTISE

#### Jobless? Work Online



I learned how to do internet marketing from this simple tutorial. It's super easy. You can too. Click here to read my experience.

#### Online Job Paying \$75/Hr



Find out how people like you can make \$50-\$100/Hr online. I'll show you how I did it.

#### Credit Cards



Compare offers from Visa, MasterCard, Amex and Discover. Best Credit cards with 0% APR for 15 month and 0% on balance transfer.

#### More Ads

AT&T 3E 2:53 PM

Class	Health	Energy	Stamina	Exp	Level
53572	15/105	11/11	44	75/105	6

2:32 3:14

[550]

### Objective: Use All Zen Points

- = Healed your character by using the Zen Master's power for 100% of the health of the group
- = Healed your character by using the Zen Master's power for 100% of the health of the group

### Fight

Action	Opponent
Fight 1	<u>Renzo the Don</u> Capitalist (L-3)
Fight 1	<u>McCherz</u> Capitalist (L-4)
Fight 1	<u>Johnny boy</u> Capitalist (L-3)

Log Sheet

Page

Fight

Results